IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 37 OF 2003

S T A T E
through District Magistrate,
South Goa District, Margao. ... Applicant.

versus

M/s Hindustan Petroleum
Corporation Limited
(a Government of India
Enterprise) through its
Regional Manager
Mr. C. S. Sanalkumar,
major, having its
registered office at
19, Jamshedji Tata Road,
Mumbai - 20 and Branch
Office at P.O. Box No.8,
F.L.Gomes Road,
Vasco-da-Gama, Goa. ... Respondents.

Mr. S. N. Sardessai, Public Prosecutor for the Applicant.

Mr. S. G. Bhobe, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 7TH AUGUST, 2003.

ORAL JUDGMENT

The State being aggrieved by the Judgment of the learned Sessions Judge, South Goa, Margao, dated 7th October, 2002, in Criminal Revision Application No.

35 of 2002, has filed the present Criminal Revision Application assailing the aforesaid Judgment.

2. The facts in brief as are necessary for the decision of this Criminal Revision Application are set out hereunder:-

The learned District Magistrate, Margao, in exercise of his powers under Section 144 of the Code of Criminal Procedure, by an ex-parte Order dated 30th July, 2002, issued under Sub-Section 1 of Section 144 of the Code of Criminal Proceedure, called upon the Respondents herein to close down the retail petrol outlet immediately or show cause within a period of seven days as to why the said Order should not be enforced. The Respondents herein had filed his reply dated 8th August, 2002, stating therein that there was absolutely no material to substantiate the Order under Section 144 of the Code of Criminal Procedure and also that there was no material to substantiate that the said retail outlet posed a danger to life, health, safety, peace and tranquility of the public. It was also contended in the said reply that a site inspection would clearly show that the retail outlet/petrol pump was situated outside the boundary wall of the oil installation and that the said boundary wall had a height of more than 10 feet with barbed wire fencing of

2 feet on the boundary wall which made access to the oil installation an impossibility. It was also averred in the said reply that the oil installation was guarded by security personnel round the clock and that there was not a single instance of any person making a surreptitious entry to the oil installation through the retail outlet/petrol pump.

3. The said retail outlet/petrol pump was commissioned in February, 1999, after obtaining approval of the learned District Magistrate for storage of bulk petroleum products, after complying with all statutory requirements as laid down under the Explosives Rules and after complying with all safety standards. The licences have been renewed from time to time. In the said reply, it was pointed out that the apprehension of the authorities was totally unfounded as the installation was situated much away from the retail outlet at a distance exceeding the prescribed norms. The Respondents herein had stated that since the installations also belong to them, they would be interested in preventing the same from any attack or anti social elements.

4. The learned District Magistrate who did not deem it necessary either to conduct an enquiry or to hold a site inspection, held that after going through

the reply filed and after taking into consideration the ground reality that the petrol pump was strategically situated close to the storage tank of I.O.C. and posed a potential danger to human lives, health and safety in general and to the persons employed in I.O.C. in particular, confirmed the ex-parte Order dated 30th July, 2002.

5. The Respondent herein, being aggrieved by the aforesaid Order of the learned District Magistrate filed Criminal Revision Application No. 35 of 2002 before the learned District & Sessions Judge, South Goa, Margao. The learned Sessions Judge, South Goa, Margao, by his Judgment, which is impugned in the present revision, quashed and set aside the Order of the learned District Magistrate.

6. The learned Sessions Judge, South Goa, Margao, while allowing the Criminal Revision Application has held (1) that the learned District Magistrate could have resorted to passing an ex-parte Order only in case there was emergency and there was no time to serve a notice on the party against whom it was being made. The learned Sessions Judge, South Goa, Margao, therefore, came to the conclusion that there was no material on the basis of which the learned District Magistrate could have passed an ex-parte Order

under Sub-Section 1 of Section 144 of the Code of Criminal Procedure. (2) the learned District Magistrate has not afforded to the Respondents herein an early opportunity of appearing before him either in person or by a pleader and showing cause against the Order. The Respondents herein in their reply dated 8th August, 2002, had sought an opportunity of producing documentary evidence and had also requested the learned District Magistrate to hold a site inspection to verify the situation. The learned Sessions Judge, South Goa, Margao, therefore, came to the conclusion that it was incumbent on the learned District Magistrate to have given sufficient and adequate opportunity to the Respondents before the final Order confirming the ex-parte Order was passed. (3) the Order passed by the learned District Magistrate does not give any reasons for rejecting the contention as pleaded by the Respondents herein in its reply dated 8th August, 2002. The learned Sessions Judge, South Goa, Margao, therefore, came to the conclusion that there was no material as could be culled out from the Order to justify the existence of the petrol pump as a source of danger to the storage tanks of the I.O.C.. The learned Sessions Judge, South Goa, Margao, also found that there was no consideration at all of the case of the Respondents herein as pleaded in its reply.

7. For the aforesaid reasons, the learned Sessions Judge, South Goa, Margao, by the Order impugned in this revision, quashed and set aside the ex-parte Order dated 30th July, 2002 and the Order dated 28th August, 2002 passed by the learned District Magistrate.

8. With the assistence of the learned Counsel for the parties, I have perused the Order impugned in the present revision. The learned revisional Court has extensively dealt with the factual matrix and for the three reasons, which have been referred to above, has quashed the impugned Orders. According to me, the learned revisional Court was perfectly right in coming to the conclusion that there was no material on the basis of which the invoking of the jurisdiction under Sub-Section 1 of Section 144 of the Code of Criminal Procedure could be justified. Since, the learned revisional Court was right in coming to the conclusion that the learned District Magistrate had not applied its mind to the various contentions raised by the Respondents herein in its reply dated 8th August, 2002, the impugned Orders of the learned District Magistrate were passed totally ignoring and dealing with the contentions raised by the Respondents herein. In view of this, according to me, there is no perversity in the reasoning of the learned Sessions Judge, South Goa,

Margao to warrant any interference in the exercise of revisional jurisdiction.

9. Accordingly, Criminal Revision Application No. 37 of 2003 is dismissed.

P. V. HARDAS, J.

RD.